

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

February 16, 2021

3:33 p.m.

MEMBERS PRESENT

Senator Mike Shower, Chair
Senator Lora Reinbold, Vice Chair
Senator Roger Holland
Senator Scott Kawasaki

MEMBERS ABSENT

Senator Mia Costello

COMMITTEE CALENDAR

SENATE BILL NO. 43

"An Act relating to campaign finance and initiatives; relating to elections and voting; and relating to unlawful interference with voting."

- MOVED CSSB 43(STA) OUT OF COMMITTEE

SENATE BILL NO. 39

"An Act relating to elections; relating to voter registration; relating to ballots and a system of tracking and accounting for ballots; establishing an election offense hotline; designating as a class A misdemeanor the collection of ballots from other voters; designating as a class C felony the intentional opening or tampering with a sealed ballot, certificate, or package of ballots without authorization from the director of the division of elections; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 43

SHORT TITLE: ELECTIONS, VOTING, CAMPAIGN FINANCE

SPONSOR(s): SENATOR(s) HUGHES

01/25/21	(S)	PREFILE RELEASED 1/15/21
01/25/21	(S)	READ THE FIRST TIME - REFERRALS

01/25/21	(S)	STA, JUD
02/02/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/02/21	(S)	Heard & Held
02/02/21	(S)	MINUTE(STA)
02/11/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/11/21	(S)	Scheduled but Not Heard
02/16/21	(S)	STA AT 3:30 PM BUTROVICH 205

BILL: SB 39

SHORT TITLE: BALLOT CUSTODY/TAMPERING; VOTER REG; MAIL
SPONSOR(s): SENATOR(s) SHOWER

01/25/21	(S)	PREFILE RELEASED 1/15/21
01/25/21	(S)	READ THE FIRST TIME - REFERRALS
01/25/21	(S)	STA, JUD
01/26/21	(S)	STA AT 3:30 PM BUTROVICH 205
01/26/21	(S)	-- MEETING CANCELED --
01/28/21	(S)	STA AT 3:30 PM BUTROVICH 205
01/28/21	(S)	Heard & Held
01/28/21	(S)	MINUTE(STA)
02/02/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/02/21	(S)	Heard & Held
02/02/21	(S)	MINUTE(STA)
02/09/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/09/21	(S)	Scheduled but Not Heard
02/11/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/11/21	(S)	Heard & Held
02/11/21	(S)	MINUTE(STA)
02/16/21	(S)	STA AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

NANCY BIRD, representing self
Cordova, Alaska

POSITION STATEMENT: Testified in support of SB 43.

BUDDY WHITT, Staff
Senator Shelley Hughes
Juneau, Alaska

POSITION STATEMENT: Answered questions and provided information related to SB 43 on behalf of the sponsor.

HEATHER HEBDON, Director
Alaska Public Offices Commission APOC
Anchorage, Alaska

POSITION STATEMENT: Answered questions related to SB 43.

CORI MILLS, Acting Deputy Attorney General
Civil Division
Department of Law
Juneau, Alaska

POSITION STATEMENT: Answered questions related to SB 43 and SB 39.

HEIDI COVEY, Chair
Nikiski Election Precinct
Nikiski, Alaska

POSITION STATEMENT: Testified on SB 39 as invited testimony.

GAIL FENUMIAI, Director
Division of Elections
Juneau, Alaska

POSITION STATEMENT: Responded to questions related to SB 39.

THOMAS FLYNN, Assistant Attorney General
Civil Division
Labor & State Affairs Section
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Responded to questions related to SB 39.

CAROL THOMPSON, Operations Manager
Division of Elections
Office of the Lieutenant Governor
Wasilla, Alaska

POSITION STATEMENT: Responded to questions related to SB 39.

ACTION NARRATIVE

[3:33:59 PM](#)

CHAIR MIKE SHOWER called the Senate State Affairs Standing Committee meeting to order at 3:33 p.m. Present at the call to order were Senators Kawasaki, Holland, and Chair Shower. Senator Reinbold arrived soon thereafter.

SB 43-ELECTIONS, VOTING, CAMPAIGN FINANCE

[3:34:48 PM](#)

CHAIR SHOWER announced the consideration of SENATE BILL NO. 43 "An Act relating to campaign finance and initiatives; relating to elections and voting; and relating to unlawful interference with voting."

[The committee adopted CSSB 43 (STA), work order 32-LS0253\I, on 2/2/21]

SENATOR SHOWER listed the individuals who were available to answer questions.

3:35:10 PM

SENATOR REINBOLD joined the committee.

3:35:41 PM

CHAIR SHOWER opened public testimony on SB 43.

3:36:14 PM

NANCY BIRD, representing self, Cordova, Alaska, stated general support for the concept of SB 43 to address loopholes in campaign finance laws. She withheld complete support because she understood that the language in SB 43 might not be constitutional. She therefore encouraged a rewrite of the bill to ensure it is constitutional.

3:36:49 PM

CHAIR SHOWER found no one else who wished to testify and closed public testimony on SB 43. He reminded the public of the opportunity to submit testimony in writing to ssa@akleg.gov.

CHAIR SHOWER asked Mr. Whitt to address the question about the constitutionality of SB 43.

3:37:21 PM

BUDDY WHITT, Staff, Senator Shelley Hughes, Juneau, Alaska, assured the committee that Legislative Legal Services did not raise constitutional issues with SB 43. He further pointed out that there have been no constitutional issues raised about Ballot Measure 2 that voters passed, and SB 43 simply expands certain provisions of that measure. He expressed confidence that the bill passes constitutional scrutiny as written, but said he would follow up with Legislative Legal Services to make sure that was accurate.

SENATOR KAWASAKI said he too considered the constitutionality of the bill. He advised that [Legislative Legal Services] indicated it would draft a memo but it would not be available for some time. He suggested the Judiciary Committee, the next committee of referral, might address the concerns further.

CHAIR SHOWER asked him to forward the [forthcoming memo] to his office and he would forward it to the Judiciary Committee.

3:38:55 PM

SENATOR REINBOLD observed that the testifier did not cite a reference.

CHAIR SHOWER asked if there were any questions.

3:39:39 PM

SENATOR KAWASAKI said he had questions for Heather Hebdon with the Alaska Public Offices Commission and Cori Mills who represents the Office of the Attorney General.

He asked Ms. Hebdon if she reads the new subsection (s) to delete the references to candidates in all future elections. He questioned how that would affect APOC's work.

3:40:55 PM

HEATHER HEBDON, Director, Alaska Public Offices Commission APOC, Anchorage, Alaska, agreed that the new subsection (s) would bring campaign activities of ballot measure groups who are making independent expenditures under the same reporting regime as those making independent expenditures and candidates' election activities. Thus, both the contributor and the receiving entity would be required to disclose contributions made and contributions received within 24 hours. She acknowledged that APOC staff would be affected by this increase in filer activity and needed education.

SENATOR KAWASAKI asked how the office would address this anticipated increased work volume.

MS. HEBDON said she was not able to speak to the specific impact because it is an unknown at this point, but the daily reporting for some groups will increase filing and require more oversight from staff. She noted that the Anchorage municipal election would be the first election where this measure is in effect. She also acknowledged that the regulations were still a work in progress.

CHAIR SHOWER asked Mr. Whitt to address Senator Kawasaki's question.

3:44:00 PM

MR. WHITT stated that SB 43 targets Dark Money by ensuring that Dark Money provisions regarding donations to and from independent expenditure groups apply to ballot measures under the same guidelines as they do for candidates.

3:45:09 PM

CHAIR SHOWER summarized his understanding that SB 43 essentially applies the same rules of engagement to ballot measures as Ballot Measure 2 is applying to candidate campaigns.

MR. WHITT agreed and wondered whether that was the reason for the constitutional question. He reminded the members that once a ballot measure is passed, it cannot be changed for two years. He reiterated that SB 43 does not seek to change Ballot Measure 2; it expands the measure by adding provisions. He expressed interest in seeing the memo Senator Kawasaki mentioned because Legislative Legal had verbalized that an expansion was allowed and would not be considered a change. He said it would be appropriate for the next committee of referral to look at this further; he welcomed a discussion about the difference between an expansion and a change in a ballot measure.

3:46:35 PM

SENATOR KAWASAKI questioned Ms. Hebdon's statement that SB 43 would apply to the 2021 Anchorage municipal election, because it would not become effective until 90 days after it was signed into law.

MR. WHITT replied that was his understanding as well.

3:47:26 PM

SENATOR KAWASAKI asked if Ms. Mills could discuss the question about expanding an existing ballot proposition that voters just passed versus rescinding it.

3:47:46 PM

CORI MILLS, Acting Deputy Attorney General, Civil Division, Department of Law, Juneau, Alaska, stated that the Alaska Constitution does not allow a ballot measure to be repealed for 2 years, but it can be amended. She said there are court cases that describe the difference between a repeal and an amendment. This includes a qualitative analysis that goes to the heart of the purpose of the ballot measure and whether the core purpose is being repealed. She said she had not done the analysis as to whether an expansion would be considered an amendment versus a repeal. She reiterated that if the core provisions that the people passed are still in place and unaltered, that would fall on the side of an amendment to the law rather than a repeal and that would be okay.

3:49:18 PM

CHAIR SHOWER asked her to prepare the analysis for the next committee of referral.

MS. MILLS agreed to do so.

CHAIR SHOWER found no further questions and solicited a motion to move the bill from committee.

[3:49:59 PM](#)

SENATOR REINBOLD moved to report CSSB 43(STA), work order 32-LS0253\I, from committee. [The motion did not include individual recommendations and attached fiscal note(s).]

[3:50:19 PM](#)

CHAIR SHOWER found no objection and CSSB 43(STA) was reported from the Senate State Affairs Standing Committee.

[3:50:26 PM](#)

At ease

SB 39-BALLOT CUSTODY/TAMPERING; VOTER REG; MAIL

[3:54:06 PM](#)

CHAIR SHOWER reconvened the meeting and announced the consideration of SENATE BILL NO. 39 "An Act relating to elections; relating to voter registration; relating to ballots and a system of tracking and accounting for ballots; establishing an election offense hotline; designating as a class A misdemeanor the collection of ballots from other voters; designating as a class C felony the intentional opening or tampering with a sealed ballot, certificate, or package of ballots without authorization from the director of the division of elections; and providing for an effective date."

He listed the individuals available to answer questions and advised that the committee would first hear invited testimony from Heidi Covey.

[3:55:28 PM](#)

HEIDI COVEY, Chair, Nikiski Election Precinct, Nikiski, Alaska, stated that she was invited to share what happened at the Nikiski Precinct during the recent election. Her testimony was as follows:

This year was a challenging year for all of us with the pandemic. None of us have been through a pandemic before, which obviously opened up some election

differences for us. This year we all were introduced to a new voting system in the state. In that action we were unable to even have training in person because, again, of the pandemic. All that was done via either calling in to the state, via the internet, or we actually had CDs.

3:56:27 PM

November 3 was a challenging day for I would say every election official statewide. We had a higher turnout and it was a very intense, passionate election. I can speak for my community, which for the record is one of the areas in our state - Birch Creek and Nikiski have a higher percentage of voter turnout anywhere in our state. Before 6:30 in the morning, we already had people lining up out the door to come and vote in this election.

So, we were already under that pressure, under that gun. The other thing we also had that day, because of higher volume and people very passionate... In my community, in my borough, we had just the month prior we had just voted down vote by mail, of which my community is extremely passionate about. Actually, our borough is.

Because of the pandemic, there was a decision made to mail out ballots. That absolutely caused stress for a good number of the people in my community. Because we had just voted it down, not only in October but we also voted it down in 2014. To automatically have ballots mailed out to these individuals it very much upset them. And being front line workers, we were the ones that had to handle that in-person, eyeball-to-eyeball, with the voters of our area.

We had that obstacle and in that obstacle they were physically bringing in those ballots, handing them to us and we were having to destroy them and throw them away. Plus also, we heard them say "Hey look you know this was a decision made by the pandemic for those people in charge in Juneau."

Lets see, we had higher numbers - we had that we also, because the passion of the people - trying to keep it organized and moving - there were a lot of people that were passionate about the team that they represented.

That was another challenge we faced - trying to make sure there was no campaigning taking place in the area of the vote being held. We had to monitor parking lots - it was intense on both sides. This was the first time that we have ever had to contact the State Troopers to do drive-bys just in case of the passion and in case there were conflicts. I personally had to ask three individuals to help monitor our parking lot just for those reasons, because of the passion that people had for this election.

3:59:38 PM

Integrity and security is probably one of those things I would have to say that is important if you are an American citizen. Understanding that the integrity of any election and the security of any election is foremost - almost as important, I would say as our national defense. Our elections in our country absolutely, absolutely affect our world. And as an election official, the mail-in ballot thing, I'm extremely concerned about. Just for the fact that integrity is something that you do by yourself. How do we secure those mail out ballot? We have a system in place - it's an absentee that we request in circumstances of which we need them. That system absolutely has served good for everybody that I've ever known. This mail-in thing is kind of creating a little bit of a problem and I can tell you that that is a grave concern and I can tell you the people of the Kenai Peninsula Borough definitely sent a message saying "Hey, we don't want that because we want secure elections."

CHAIR SHOWER thanked Ms. Covey for the testimony and said he thought it was germane to hear from a frontline worker to provide context and describe issues they may have seen.

4:01:45 PM

SENATOR REINBOLD commented that she found it amazing that the borough voted against vote by mail and ballots were sent anyway. She thanked Ms. Covey and other election volunteers.

4:02:11 PM

CHAIR SHOWER asked what the Division of Elections instructed precincts to do with the mail-in ballots that voters handed to election workers.

MS. COVEY answered that the instructions were to destroy those ballots.

CHAIR SHOWER relayed a conversation his office had with [an election worker] from Eagle who said that her precinct was instructed to mail all unused ballots back to the Division of Elections.

[4:03:11 PM](#)

SENATOR KAWASAKI asked Ms. Covey if she said that people in her area received mail-in ballots that they had not requested.

MR. COVEY answered yes.

SENATOR KAWASAKI asked if any of those people would testify to that or sign an affidavit that lays out exactly what happened because he would like to get to the bottom of the complaints. He noted that the Division of Election tracks the requests for ballots and they are not supposed to send out ballots without a request. However, in this last election the Lieutenant Governor did direct the Division of Elections to send ballot applications to people who were age 65 and older.

CHAIR SHOWER confirmed that ballot applications were sent to anybody over age 65 regardless of request.

SENATOR KAWASAKI asked Ms. Covey to provide more clarity if she could.

CHAIR SHOWER asked her to forward any supplemental information to his office.

MS. COVEY agreed to do so.

[4:05:27 PM](#)

CHAIR SHOWER asked the first question on the list of possible questions for the Division of Elections. [Copies of this handout were in the bill packets.]

1. What protocols does the Division of Elections utilize that guarantees the most accurate voter rolls?

[4:05:53 PM](#)

GAIL FENUMIAI, Director, Division of Elections, Juneau, Alaska, explained that the division follows the list maintenance

procedures in AS 15.07.130. The division also receives weekly information from the Court System to use for felony inactivations, information from other states about double registrations, information from the Division of Health, Analytics, and Vital Records related to deceased voters, and staff scans obituaries statewide to identify deceased voters as well as receiving this information directly from a relative. Alaska also participates in the Electronic Registration Information Center (ERIC) that uses a secure multistate data-matching tool that is designed to improve accuracy of voter rolls. Further, registrations are canceled based on individual requests and the division runs internal duplicate registration reports.

CHAIR SHOWER asked if she or the lieutenant governor have the authority to use additional state and federal databases or if the legislature would need to provide statutory authority. He asked if there would be any associated costs if the legislature did provide statutory authority to use other databases.

MS. FENUMIAI deferred the question to the Department of Law.

[4:08:21 PM](#)

CORI MILLS, Acting Deputy Attorney General, Civil Division, Department of Law, Juneau, Alaska, said she believes that would require a statutory change, but it depends on how the information is couched in terms of confidentiality. She offered to look at the specific databases he was interested in to make the determination.

CHAIR SHOWER solicited a response from the representative from the Lieutenant Governor's Office.

JOSH APPLEBEE, representing the Lieutenant Governor's Office, said Ms. Mills and Ms. Fenumiai answered the question specifically.

CHAIR SHOWER asked if there were questions.

[4:09:57 PM](#)

SENATOR KAWASAKI noted that there were 36 questions on the list and suggested that they could be answered off line.

[4:10:14 PM](#)

CHAIR SHOWER said he was trying to give the committee an opportunity to pose questions directly to the Division of

Elections and the Lieutenant Governor's Office to generate discussion for the public record.

SENATOR KAWASAKI asked whether the committee would receive written answers to each of the questions.

CHAIR SHOWER said he had not asked for written responses but he was willing to forward the questions to all the relevant entities.

[4:11:12 PM](#)

SENATOR KAWASAKI said some of the answers should be part of the public record but receiving all the answers in writing would make the information easier for members to digest.

CHAIR SHOWER said he had been asked to have these individuals come before the committee to answer questions but he was happy to ask for the answers in writing.

SENATOR REINBOLD said she would prefer to get the answers in writing.

[4:12:33 PM](#)

CHAIR SHOWER said he was happy to go either way but the experts were here now.

SENATOR REINBOLD asked Ms. Fenumiai why her staff scans obituaries and suggested the division could instead request the official death certificates.

[4:14:05 PM](#)

MS. FENUMIAI replied the division receives from the Division of Health, Analytics, and Vital Records a monthly list of the individuals who have death certificates in the state of Alaska. She said she believes it is a legal question whether the division can request the death certificates. She suggested that Ms. Mills or Mr. Flynn might be able to respond now or the division could follow up with a written response.

SENATOR REINBOLD recalled previous testimony she thought was from the Heritage Foundation listing possible ways to cross-reference voter rolls. She emphasized that this was important because the Division of Elections' work was the foundation for a representative republic.

[4:15:42 PM](#)

MS. FENUMIAI said the division does the best it can to keep the voter records accurate and clear under the constraints of the

National Voter Registration Act and state law. The division cannot remove voters from the rolls because they do not vote; it requires a process that is defined in both federal law and AS 15.07.130.

SENATOR REINBOLD asked whether the division has any way to track people who has moved out of state.

MS. FENUMIAI answered that moving out of state does not negate a person's right to remain a registered voter in the state of Alaska. AS 15.05.020 has an intent to return provision and there are also some residency issues under the Alaska Constitution. She deferred further explanation to the Department of Law.

4:17:20 PM

SENATOR REINBOLD described it as a serious red flag that people remain on the voter rolls even when they no longer vote or have moved out of state. She asked if she heard this correctly.

MS. FENUMIAI answered that the division is able to cancel Alaska voter registrations upon notification from another state that somebody registered to vote and indicated that they previously registered to vote in Alaska. The division also participates in the ERIK program that does cross-state voter registration database matching from 30 member states and the District of Columbia. The list maintenance law also has qualifying factors for removing names such as undeliverable mail, not voting or appearing to vote for two General Elections, and no voter contact. She offered to send the committee a detailed explanation of the division's list maintenance process.

SENATOR REINBOLD expressed frustration that so many people were receiving ballots when they no longer live in Alaska, "including my kids." She referenced an earlier presentation that claimed an area had more people registered to vote than the population. She emphasized her commitment to find solutions.

4:19:29 PM

CHAIR SHOWER asked Ms. Fenumiai to email the detailed explanation of the division's list maintenance process as well as the response from the Department of Law regarding part of Senator Reinbold's question. He asked her to clarify the question and who might provide the answer.

MS. FENUMIAI emphasized that the division takes voter roll accuracy and list maintenance very seriously. If the legislature wants to change that process, she said the division will comply

so long as the change complies with the National Voter Registration Act. She suggested that either Ms. Mills or Mr. Flynn talk about the intent to return language currently in statute.

4:20:24 PM

MS. MILLS cited the first part of the first sentence of art. V, sec. 1, Constitution of the State of Alaska:

Every citizen of the United States who is at least eighteen years of age, who meets registration residency requirements which may be prescribed by law,

She explained that the requirements that may be prescribed by law refer to **AS 15.05.020. Rules for determining residence of voter**. She agreed with Ms. Fenumiai that it is the intention to return, not a physical presence in the district. She deferred further comment to Mr. Flynn.

4:21:23 PM

THOMAS FLYNN, Assistant Attorney General, Civil Division, Labor & State Affairs Section, Department of Law, Anchorage, Alaska, added that there is sometimes a misconception that a person must be a resident for a certain period, but residency is established 30 days in advance of the election. Once residency has been established, the original address used to register to vote is presumed to remain. Subsequent paragraphs discuss specific ways residency changes.

SENATOR REINBOLD said it was still not clear.

4:22:16 PM

SENATOR KAWASAKI referenced the invited testimony from the election worker from Nikiski and asked how it could have happened that people who did not request ballots somehow got ballots.

MS. FENUMIAI said she could not think of a way for that to have happened, because the division does not mail ballots to any voter unless they first receive a complete and valid request for an absentee by mail application for that voter.

SENATOR KAWASAKI asked, should Ms. Covey supply the names, whether she could check to see if the division had a record of receiving a valid request for an absentee ballot and that the division sent a ballot.

MS. FENUMIAI answered, "Most definitely, if we had names of individuals we could look into our voter registration database to determine if we had an application on file and/or if a ballot was sent to a voter." She added that it seems that a large number of pre-filled absentee ballot applications were sent to voters during the Primary and General Elections and the division received many calls from people who believed they had received a ballot. However, the division determined "it was one of these mini, multiple by-mail applications that were sent to their home."

4:24:22 PM

CHAIR SHOWER advised that his office asked both the Division of Election and the Lieutenant Governor's Office that same question and they turned some information over to law enforcement. He said he was still waiting for answers but the question was germane and he was very interested in the answer. Was it a ballot or was it an application?

4:25:24 PM

SENATOR HOLLAND noted that his child moved away from the house about three years ago and ballot applications still arrive for that child. He added that he voted absentee for the first time this year and he could understand that people could get confused about the difference between a ballot application and a ballot. He wondered whether some people misunderstood that they received a pre-filled ballot application, not a ballot.

CHAIR SHOWER said it was a good point because in addition to the state, organizations are able to send out ballot applications and there were more of both this last election cycle.

CHAIR SHOWER asked question 20 on the list of possible questions for the Division of Elections.

20. Exactly what data was gained by the hack? Security ID protocols? Absentee applications data? Addresses? Drivers License numbers? Last 4 digits of SSN? Digital signatures?

4:27:00 PM

CHAIR SHOWER further asked if any of the data that was stolen was sufficient to be used on a fraudulent ballot that could be sent to the Division of Elections.

4:27:10 PM

MS. FENUMIAI answered that the data that was exposed was voter names, addresses, date of birth, last four digits of the Social Security number, driver's license number, state ID number, party affiliation, and email address, all of which is also available on the Division of Elections' website.

MS. FENUMIAI clarified that this was a data exposure, not a hack. She continued to say, "The outside actor was able to access information but was not able to change any information. The outside actor also had no access to any vote-counting processes." Responding to the second question, she said the division is continuing to looking into the data exposure, but a review of the 2020 election found no evidence of fraudulent activity. "For example, there was not an increase of duplicate voting as one would expect if this information had been used in a fraudulent manner, especially when the overall turnout for voting by mail and the overall turnout for the election had increased."

CHAIR SHOWER restated the question, asking if any of the exposed data was sufficient to be used to fill out a ballot that the division would accept, assuming that it was the only ballot from that voter.

4:29:16 PM

MS. FENUMIAI explained that the division would first have to have received an absentee ballot application that included all the required statutory information for that voter. Second, the returned ballot must have a voter signature, a voter identifier, and (with the exception of the 2020 election) a witness signature.

CHAIR SHOWER restated the question and asked her to answer.

MS. FENUMIAI answered that the division would accept the ballot if the division had received an application for the ballot, the ballot had the required information previously listed, and the ballot was received timely.

4:30:34 PM

CHAIR SHOWER asked if the state has any chain of custody policy or process to know who touches a ballot from the time it leaves the Division of Elections to the time it returns to the division.

MS. FENUMIAI deferred the question to Carol Thompson to discuss the details of the absentee process.

4:31:35 PM

CAROL THOMPSON, Operations Manager, Division of Elections, Office of the Lieutenant Governor, Wasilla, Alaska, explained that the division tracks receipt of the ballot application, when the ballot was sent, and when the division received the voted ballot. Once the ballot is returned, the division verifies the voter's information including the identifier, signature, and witness signature prior to the 2020 General Election.

CHAIR SHOWER asked if there was a chain of custody process to allow the division to know who touches a ballot when it leaves the Division of Elections, who receives the ballot and returns it, and who touches the ballot during the return to the Division of Elections. He asked, "What does the division know from the time it leaves the division until it gets it back?"

MS. THOMPSON replied there is no tracking per se, but if the legislature were to pass legislation requiring ballot tracking, the division would comply to every extent possible.

CHAIR SHOWER said his point was to show that there is no chain of custody. He acknowledged that it would require statutory changes to mandate ballot tracking and/or to look at multiple databases to cross-reference voter registrations. The idea is to make the system better, he said.

4:34:41 PM

SENATOR REINBOLD asked Ms. Fenumiai if she saw any anomalies in the 2020 General Election and if she believes that striking down the witness signature requirement could have affected the election in any way.

MS. FENUMIAI answered that she was not aware of any anomalies and did not have a response to the second question. She added that the division followed the court's direction.

SENATOR REINBOLD again asked for her opinion in whether or not striking down the witness signature requirement could have affected the election in any way.

4:35:40 PM

MS. FENUMIAI answered that it was her professional opinion that it did not affect the election.

4:35:55 PM

SENATOR REINBOLD asked who broke into the election system data, how it happened, what can be done with the data, and if the problem is fixed.

MS. FENUMIAI said the division has a summary of the state's preliminary investigation, which explained that outside bad actors exploited a flaw that allowed the exfiltration of voter information. The attack was automated and allowed quick access to "this PII." The flaw was fixed and the division is working with the State Security Office on other security measures.

SENATOR REINBOLD asked who specifically exposed the data, what that entity can do with the data, and if they still have access to that data. For example, could it be used to apply for a credit card?

MS. FENUMIAI replied she previously stated the data that was exposed. It was voter names, residence and mailing addresses, date of birth, last four digits of the Social Security number, driver's license number, state ID number, party affiliation, and email address. She said she did not know if someone could get a credit card with that information, the investigation is ongoing, and she only knows that outside actors were responsible for the data exposure.

4:38:38 PM

SENATOR KAWASAKI referred to Section 6 that asks the division director to provide by regulation a system to account for each used and unused ballot and absentee ballot certificate and envelope. He asked how the division would create a regulation that would account for the used and unused absentee ballots without being inside the voter's house and watching what happened to those ballots

MS. FENUMIAI replied she was not prepared to respond because the division would first need to determine the kind of regulation that would satisfy the requirement. She added that the division does track the number of ballots that are mailed out and the ones that are returned.

4:40:02 PM

SENATOR KAWASAKI pointed out that subsection (c) in bill Section 6 requires the director to account for each used or unused ballot before certifying the election under AS 15.15.450. He asked if that would put the division director in a position where certification of an election might not be done under AS 15.15.450.

MS. FENUMIAI answered that could be the case.

4:40:36 PM

SENATOR KAWASAKI said it needs to be easier for the division to administer.

CHAIR SHOWER responded that significant changes are forthcoming and the issue of easier administration could be discussed after that or in the next committee of referral.

He asked why the state was paying for protection services if the data cannot be used.

MS. FENUMIAI said she was not sure whether the information could be used for financial gain, but it was the voter registration vendor who paid for the credit monitoring service, not the state. She suggested that Mr. Applebee might have something more to add.

4:42:38 PM

CHAIR SHOWER asked for the name of the contractor that the Division of Elections used for the computer forensics on the data breach.

MS. FENUMIAI said she would follow up with the information if she was able to release the name.

MR. APLEBEE agreed with Ms. Fenumiai that the identity monitoring service vendor paid, not the state.

CHAIR SHOWER asked question 14 on the list of possible questions for the Division of Elections.

14. Can a voter dispute their vote and what is the process?

MS. FENUMIAI said she did not believe there was process in state law for a voter to dispute their vote. It is a misconception to think that a voter can ask the Division of Elections which candidate received their vote and then dispute the results. Ballots are not associated with specific voters so once a ballot is comingled and counted, it cannot be retrieved.

4:44:09 PM

CHAIR SHOWER said he wanted to highlight that some states have the ability to qualify ballots as opposed to rejecting them. His office is looking at having provisions in place so that the division can correct a ballot a voter disputes.

CHAIR SHOWER asked question 15.

15. Can a person vote twice by mistake? If so, how?

MS. FENUMIAI asked if question 14 was referring to a cure provision for people who vote by mail.

CHAIR SHOWER said that was correct.

MS. FENUMIAI advised that the statutes do not have a cure provision for people who vote by mail.

4:45:00 PM

CHAIR SHOWER said his office was looking at that. He asked her to respond to question 15 about how someone could vote twice by mistake and how that could negate their vote.

MS. FENUMIAI explained that the division has a model to catch double voting, regardless of the circumstance. It was re-implemented with the 2020 elections by not counting any absentee or question ballots until the in-person voter history was completed. As the absentee and question ballots were logged, the division was able to run duplicate voting reports to identify voters who cast ballots more than once.

4:46:26 PM

CHAIR SHOWER noted that invited testimony last week reported that a woman in District 14 had to vote a question ballot because she was told when she appeared in person to vote that she had already voted. He noted that the Division of Elections determined that the daughter had voted in the mother's name, even though the last names were not the same.

CHAIR SHOWER said he brought up the foregoing because his office had heard that "there were things in statute" that needed to be addressed to make things better.

4:47:22 PM

MS. FENUMIAI said she believes that [Jason] Rampton, [Vice Chair of the District 14 Republican Party] brought that example forward.

CHAIR SHOWER confirmed that Mr. Rampton related that to the committee last week. He asked if she had any comment.

MS. FENUMIAI replied that the division determined that a voter signed on Ms. Ditzler's line on the precinct register. When she came to vote in person, she was informed that she had already voted and she had to vote a question ballot, "which was then reviewed and counted."

CHAIR SHOWER thanked her for the update.

4:48:20 PM

SENATOR KAWASAKI said his questions relate to the automatic voter registration when someone applies for a permanent fund dividend (PFD). He asked how it could happen that registering for a PFD could change an individual's voting address and prevent that person from voting in the subsequent election. He noted that a committee member cited this example in an earlier hearing.

MS. FENUMIAI advised that under the PFD automatic voter registration (AVR) program, when individuals who are 18 years of age and a U.S. citizen apply for a PFD, their information is sent to the Division of Elections and is used to update the voter's record. If the address on the PFD application is different from the voter registration address and the individual does not respond to a mailing from the division requesting clarification, the individual's address is updated to the address on the PFD application.

4:49:51 PM

SENATOR KAWASAKI summarized that the information on a person's myPFD account is the default for a voter's address.

MS. FENUMIAI answered that is correct, but there is also an option on the online PDF application for the voter to designate the address they want to use for their voter registration. If that box is left blank, the default is the residence address provided on the PFD application.

SENATOR KAWASAKI referred to the PFD application he printed for himself and pointed out that it includes the bolded instruction for the applicant to enter their correct residence address to ensure the applicant is assigned to the correct voting district. This is followed by the caution that if the correct residence address is left blank, the address entered earlier on the PFD

application would be used as the applicant's voter registration address, which may change the applicant's voting district.

4:51:09 PM

SENATOR KAWASAKI described the written PFD application as quite self-explanatory; the applicant was responsible for the change in their voting district. He asked Ms. Fenumiai if she was able to look back and determine why an individual's voting district changed when they had not changed their residence.

MS. FENUMIAI confirmed that the division would be able to look at the specific voter's residence address for voter registration purposes and their voter history if the voter's name is provided. She clarified that a voter is legally entitled to vote a question ballot at any precinct in the state if their name is not on the precinct register.

SENATOR KAWASAKI said he would forward the name.

CHAIR SHOWER asked Mr. Applebee to discuss the concern that felons, noncitizens, and others who were not allowed to vote, were being automatically registered.

4:53:34 PM

MR. APLEBEE recalled that this was discussed in a previous iteration of the bill and the Lieutenant Governor's Office worked on the current language with the sponsor's office. He said the notion is to ensure that people who are eligible to vote do not fall through the cracks and people who are not eligible to vote are removed from the voting rolls.

CHAIR SHOWER asked if he had seen examples of people voting when they should not be on the rolls, such as someone convicted of a felony who had not been unconditionally discharged from incarceration, probation and or parole. He asked him to articulate the reason the Lieutenant Governor's Office would like the PFD automatic voter registration to be changed to an opt in as opposed to automatic.

MR. APLEBEE said he would follow up after he looked at his notes from last year and the year before that to refresh his recall.

4:55:03 PM

SENATOR REINBOLD offered her view of the 2020 election and asked if the statutory requirement for a witness signature on absentee ballots helps improve election integrity.

MS. FENUMIAI replied the witness signature has been viewed as a deterrent to voter fraud.

[4:56:48 PM](#)

CHAIR SHOWER asked for the number of people registered to vote in Alaska and the number who are eligible to vote.

MS. FENUMIAI reported that 599,687 people were registered to vote as of February 3, 2021. She did not have the number of people eligible to vote because she did not have access to the voting age population.

CHAIR SHOWER asked if she used the term catalyst or deterrent when she answered Senator Reinbold's question. He added that he thought she said deterrent.

MS. FENUMIAI confirmed that she used the term deterrent, adding that the witness signature is used as a mechanism to prevent fraud.

[4:58:17 PM](#)

SENATOR KAWASAKI mentioned the court case and asked if a witness intent on fraud could fraudulently enter a signature on the witness line.

MS. FENUMIAI deferred to Ms. Mills to discuss the court case.

MS. MILLS explained that the linchpin of the Department of Law's argument was that the witness signature was an important tool that the legislature put into statute to assist the division in the absentee voter process. She acknowledged that fraud could still occur despite that extra step.

SENATOR REINBOLD asked Ms. Fenumiai if she meant that the witness signature is a mechanism to prevent voter fraud.

MS. FENUMIAI replied it is a deterrent; the state has determined that the witness signature is important to assist in identifying the person who cast the ballot.

[5:01:24 PM](#)

CHAIR SHOWER commented that the question about a potentially fraudulent witness signature goes back to his point that the chain of custody of ballots needs improvement.

CHAIR SHOWER held SB 39 in committee for future consideration.

5:03:08 PM

There being no further business to come before the committee,
Chair Shower adjourned the Senate State Affairs Standing
Committee meeting at 5:03 p.m.